NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOSEPHUS T.Y. NYEMA, SR., Plaintiff, v. COUNTY OF MERCER, et al., Defendants.	CIVIL ACTION NO. 04-506 (MLC) **MEMORANDUM OPINION**

THE COURT, by Order and Judgment entered December 22, 2005, granted summary judgment in favor of the Defendants in this matter. (See dkt. entry no. 49, 12-22-05 Order & J.) Pursuant to the Order and Judgment, the Clerk of the Court closed the action that same day. (See id.)

THE PLAINTIFF, Josephus T.Y. Nyema, Sr., appealed. (See dkt. entry no. 50, 1-6-06 Notice of Appeal.) The United States Court of Appeals for the Third Circuit ("Third Circuit"), upon reviewing the record, found "no basis on which Nyema could withstand Defendants' motion for summary judgment." Nyema v. Cnty. of Mercer, No. 06-1120, 2006 WL 1626603, at *1 (3d Cir. June 12, 2006). Accordingly, the Third Circuit dismissed the appeal as lacking "an arguable basis in law or in fact." Id. at *2 (holding that because "the District Court's judgment was clearly correct, Nyema had no arguable legal basis upon which to appeal."). The Third Circuit denied Nyema's subsequent motion for rehearing. Nyema did not petition to the United States Supreme Court for a writ of certiorari.

NYEMA, eight years later, now files a motion styled as "Notice of Motion on Short Notice for Leave to Refile or Reopen Racial Discrimination Civil Action." (Dkt. entry no. 53, Nyema Mot.) The motion appears to argue that "newly discovered fraudulent material evidence" warrants "refiling or reopening" the case. (Id. at 2–3.)

THE COURT will resolve the Motion without oral argument. See L.Civ.R. 78.1(b). The Court, as a procedural matter, notes that it cannot provide the relief requested, because the Third Circuit dismissed Nyema's appeal. See Chatman v. Allegheny Cnty., 278 Fed.Appx. 163, 163 (3d Cir. 2008); El-Hewie v. New Jersey, No. 10-4847, 2011 WL 1899278, at *2 (D.N.J. May 19, 2011). The Court, nevertheless, will provide additional analysis.

THE COURT, having carefully considered Nyema's motion, determines that Nyema effectively moves for relief from a judgment under Federal Rule of Civil Procedure ("Rule") 60(b). See Fed.R.Civ.P. 60(b)(1)–(6) (enumerating grounds for relief). The Court, having viewed Nyema's arguments in the context of the enumerated grounds for relief under Rule 60(b), finds Nyema's motion meritless. Although Nyema appears to challenge the Court's resolution of his claims, he fails to provide evidence to substantiate his arguments. (See generally Nyema Mot.) See also Walsh v. United States, 571 Fed.Appx. 109, 110 (3d Cir. 2014) (upholding the District Court's finding that the movant's Rule 60(b) motion was meritless where movant failed to "set forth a scintilla of evidence" to support his claims) (internal quotation omitted).

THE COURT also must deny Nyema's motion as untimely. See Fed.R.Civ.P. 60(b)–(c)(1) (requiring that movant file motion for "Relief from a Final Judgment, Order, or

Proceeding … no more than a year after the entry of the judgment or order or the date of the proceeding."); see also Gordon v. Monoson, 239 Fed.Appx. 710, 713 (3d Cir. 2007) (stating that — even under the catchall provision of Rule 60(b)(6) — motions filed more than a year after the final judgment are generally untimely unless "extraordinary circumstances" excuse the movant's failure to proceed sooner); Moolenaar v. Gov't of V.I., 822 F.2d 1342, 1348 (3d Cir. 1987) (two years not "reasonable time" for Rule 60(b) purposes).

THE COURT, in so holding, does not deprive Nyema of due process, access to the Court, or the opportunity to be meaningfully heard. See Monoson, 239 Fed.Appx. at 713; Reardon v. Leason, No. 92-2433, 2012 U.S. Dist. LEXIS 109598, at *5 (D.N.J. Aug. 6, 2012). The Court will thus deny the motion styled as "Notice of Motion on Short Notice for Leave to Refile or Reopen Racial Discrimination Civil Action" and issue an appropriate order.

s/ Mary L. Cooper
MARY L. COOPER
United States District Judge

Dated: December 12, 2014